



**SUPREME COURT OF THE UNITED STATES**

OCTOBER TERM, 1944

**No. 1192**

CARRIE A. LOUNT, Widow; H. L. MOSHER, as  
Attorney in Fact for Carrie A. Lount,  
*Petitioners.*

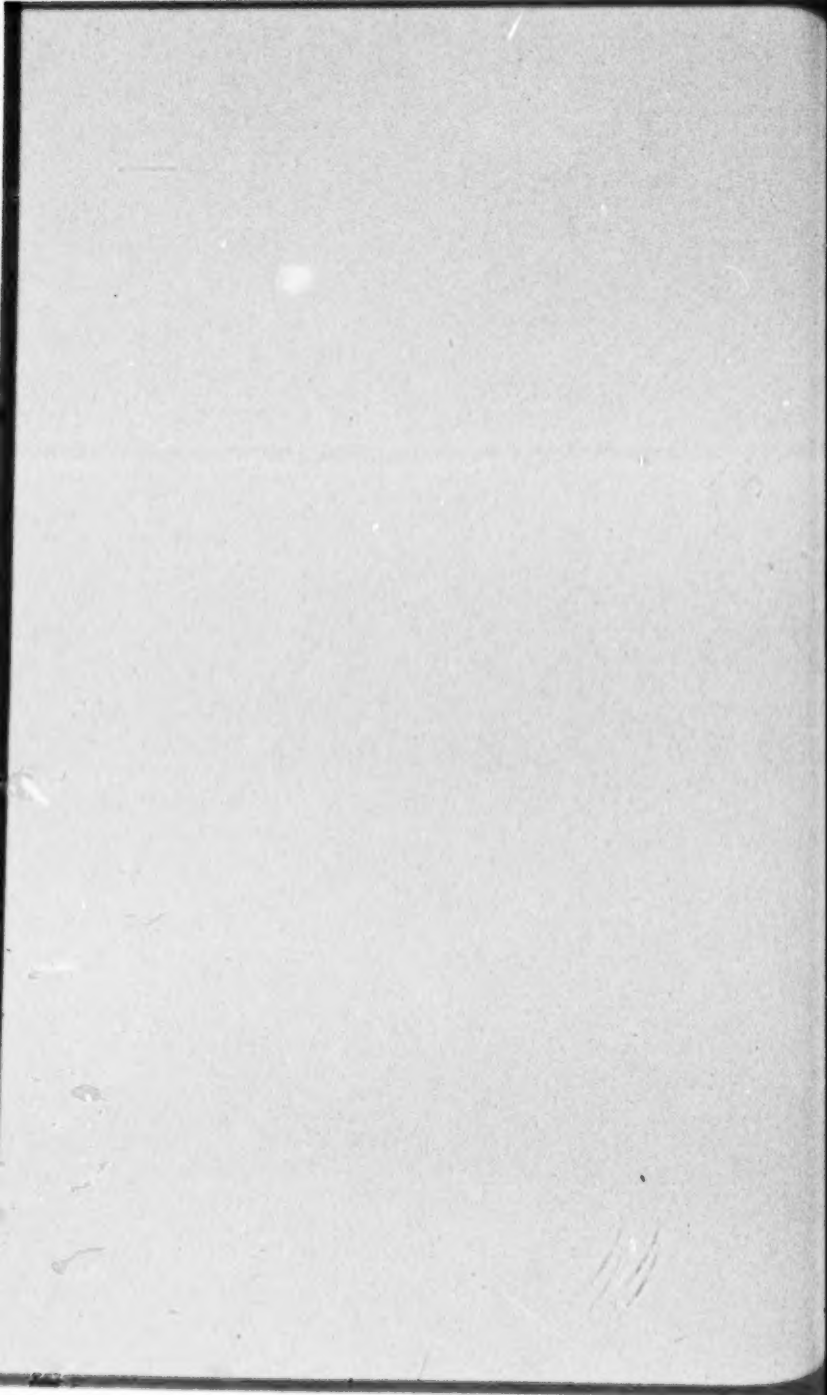
*vs.*

HALBERT H. HINER; NELL H. HINER, His Wife;  
WILLIAM TELL; and LUCILLE TELL, His  
Wife; Doing Business as Co-partners under the  
Firm Name of the Phoenix Auto Top Company,  
*Respondents.*

**BRIEF OF RESPONDENTS IN OPPOSITION TO  
PETITION FOR WRIT OF CERTIORARI**

SNELL, STROUSS & WILMER  
CHARLES L. STROUSS  
*Counsel for Respondents.*



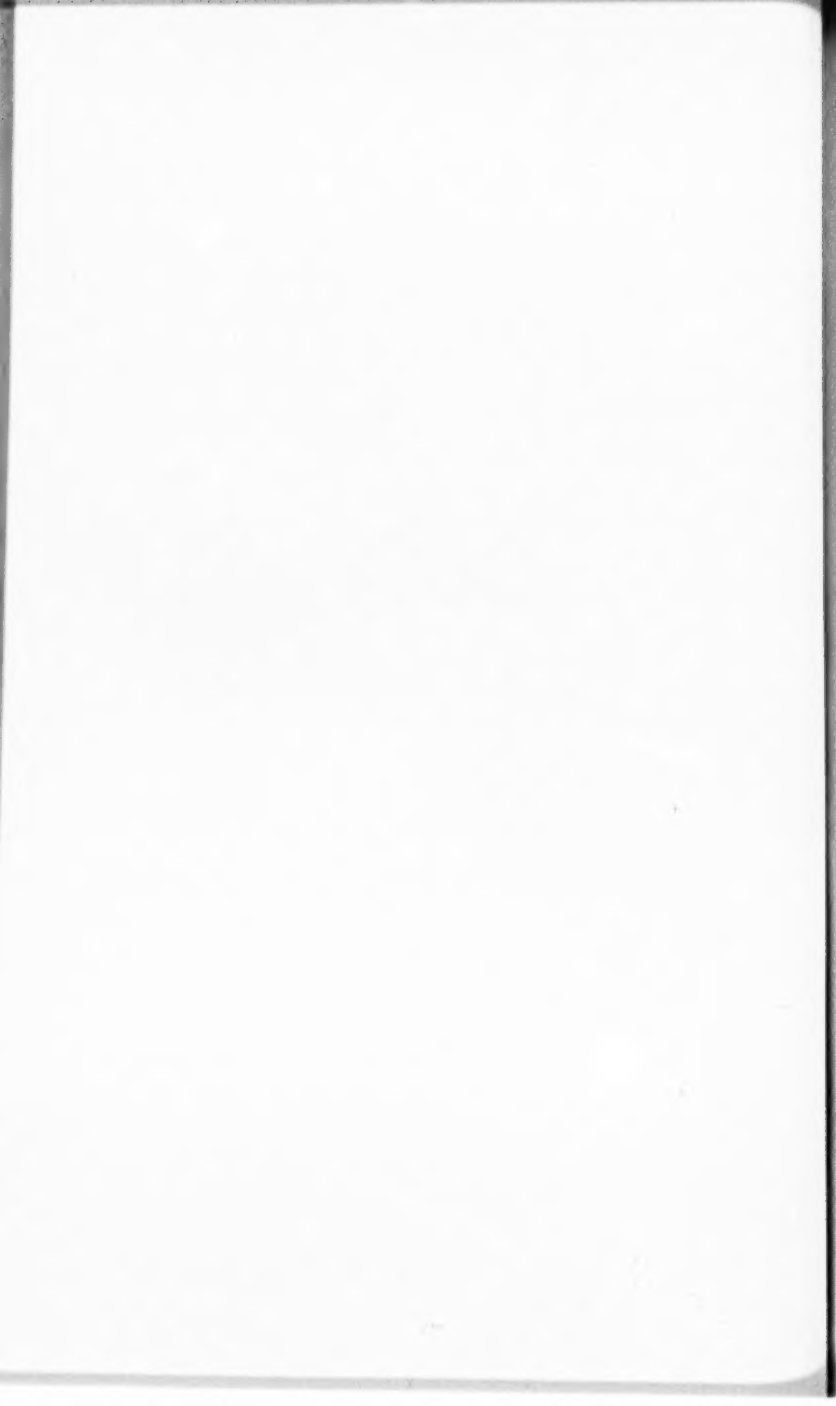


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## **BRIEF OF RESPONDENTS IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI**

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### **Opinions Below**

No opinion was filed in either the Superior Court in and for Maricopa County, Arizona, or in the Supreme Court of Arizona.

### **Statement of the Case**

The matters in the record relevant to the Petition for a Writ of Certiorari are as follows:

By a complaint filed in the Superior Court in and for Maricopa County, Arizona, the Petitioners began an action against the Respondents for the possession of certain real property and for rent. After a trial before the Court without a jury, judgment was entered in favor of Respondents (R. p 5). Petitioners filed a Notice of Appeal (R. p 7) and an Affidavit of Inability to Give Bond on Appeal (R. p 8). Respondents then, pursuant to Section 21-1805, Arizona Code, 1939, made demand for proof of the facts stated in the Affidavit (R. p 9). A hearing was had on this demand on September 11, 1944, and an order entered by the Superior Court approving the appeal without bond by Petitioner H. L. Mosher, and *disapproving* and denying the appeal by Petitioner Carrie A. Lount without bond (R. Fol 34, p 9). Both Petitioners proceeded with their appeal to the State Supreme Court, the Petitioner Carrie A. Lount filing no bond on appeal notwithstanding the order of the Superior Court denying her right to appeal without bond.

The appeal was duly docketed in the State Supreme Court. Thereafter, on November 13, 1944, Respondents filed in the State Supreme Court their motion to dismiss the appeals on the grounds:

1. As to the Petitioner, Carrie A. Lount, that she had failed and refused to file a cost bond as required by the laws of the State of Arizona in order to perfect her appeal;
2. As to the Petitioner, H. L. Mosher, that it appeared upon the face of the record

that she was not a person aggrieved by the judgment, and so not entitled to appeal.

(R. Fols 35-36, p 13)

The Supreme Court of Arizona granted the motion and dismissed the appeal of both Petitioners (R. p 16). A motion for rehearing was denied December 18, 1944 (R. p 17).

### **Summary of Argument**

The Petition should be denied because:

1. The order of the State Supreme Court dismissing the appeal to that court determined a matter of purely local law and is conclusive; no federal question is presented by the petition.

### **Argument**

The Petition should be denied because:

The order of dismissal by the State Supreme Court determined a matter of purely local law and is conclusive; no federal question is presented by the petition.

The Petition herein seeks a review by this Court of an order of the Supreme Court of Arizona dismissing Petitioners' appeal to that court because not in conformity with the statutes of Arizona providing for appeals.

The mode of appealing from judgments of a state



subordinate court to the State Supreme Court is a matter of local concern only.

*Coyle v. Smith*, 221 U. S. 559;

55 L.Ed. 853; 31 S.Ct. 688.

*John v. Paullin*, 231 U. S. 583;

58 L.Ed. 381; 34 S.Ct. 178.

An order of a State Supreme Court dismissing an appeal from a subordinate court because not in conformity with the state statutes governing appeals determines a matter of local concern only, presents no federal question, and is not reviewable by this Court.

*Coyle v. Smith*, supra

*John v. Paullin*, supra

*Newman v. Gates*, 204 U. S. 89;

51 L.Ed. 385; 27 S.Ct. 220;

*Chapell Chem. etc. Co. v.*

*Virginia etc. Mines Co.*,

172 U. S. 472;

43 L.Ed. 520; 19 S.Ct. 268.

### Conclusion

It is respectfully submitted that the Petition should be denied.

Respectfully submitted,  
SNELL, STROUSS & WILMER,  
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